

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Sprint Petition for Declaratory Ruling)
Obligation of Incumbent LECs to Load)
Numbering Resources Lawfully Acquired)
And to Honor Routing and Rating Points)
Designated by Interconnecting Carriers)

JUL 19 2002

cc Docket # 01-92
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

01-92

REPLY TO OPPOSITION

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files its reply to the opposition of BellSouth Corporation and BellSouth Telecommunications ("BellSouth") to the above-captioned Petition for Declaratory Ruling filed on May 9, 2002 by Sprint Corporation on behalf of Sprint PCS.¹ Nextel is a national commercial mobile radio service ("CMRS") provider, and as such, Nextel requires interconnection with BellSouth and other incumbent local exchange carriers ("ILECs") to terminate calls to landline telephone subscribers. CMRS-ILEC interconnection is accomplished by the negotiation of an interconnection agreement under the Federal Communications Commission ("FCC" or "Commission") uniform federal framework established in the FCC's Local Competition Order.² Nextel has an interconnection agreement in effect with BellSouth that provides for the mutual termination of calls presented by each carrier's

¹ Sprint Petition for Declaratory Ruling, filed May 9, 2002 ("Sprint Petition") and BellSouth Opposition filed May 22, 2002 ("BellSouth Opposition").

² Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

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callers to the other carrier's network. The agreement covers the terms for interconnection with Nextel in all of BellSouth's landline telephone territory throughout its nine-state market area, including compensation from Nextel for BellSouth's provision of transit services when BellSouth hands CMRS traffic to an independent LEC operating within its LATA for termination.

As described in the Sprint Petition, BellSouth recently departed from well-accepted CMRS-landline interconnection conventions by announcing in January 2002 that it would no longer activate NPA-NXX codes where the routing and rating of the call was separate and the rating point was with an independent LEC.³ As Nextel already has in place a number of these types of arrangements and seeks to serve smaller, more rural communities with the same quality of "local" CMRS service as is available in larger markets, this unilateral BellSouth announcement caused great alarm. When BellSouth shortly followed its announcement with the filing of a Section 271 application for the states of Louisiana and Georgia, Nextel evaluated BellSouth's new policy against the "competitive checklist" contained in Section 271 and determined that the policy was contrary to the company's basic interconnection obligations under the Communications Act, as amended. Nextel filed an opposition to the Section 271 application, pointing out compliance issues with Section 271 checklist items 1 (interconnection) and 9 (numbering).⁴

Plainly recognizing that it could not defend its new policy of blocking NPA-NXX code activations, BellSouth subsequently modified it.⁵ In a March 20 notification to all carriers,

³ See January 2002 BellSouth Carrier Notification (Exhibit C, Sprint Petition).

⁴ See Comments in Opposition of Nextel Communications, Inc., CC Docket No. 02-35, filed March 4, 2002. ("Nextel Comments").

⁵ See BellSouth Carrier Notification (SN91082844), dated March 20, 2002 (Exhibit E, Sprint Petition).

BellSouth stated that “[I]f this arrangement [of routing traffic to or from NPA/NXXs, which are established with a third-party rate center] is utilized, BellSouth will process the code memorandum request, while at the same time raising the issue with the appropriate state commission for determination.”⁶ Thus, while it stated it would no longer block the implementation of new NXX codes with rating centers in an independent ILEC territory,⁷ BellSouth at the same time announced that it would fight the legality of these common CMRS interconnection arrangements in state-by-state proceedings.

In disposing of Nextel’s opposition to the BellSouth Section **271** application, the Commission declined to rule on the merits, noting that Nextel and other CMRS carriers had raised “issues the Commission currently is considering in ongoing rulemaking proceedings.” The Order also stated that BellSouth had “rescinded its policy that gave rise to [the] complaint” and that due to the “time constraints and specialized nature of the section 271 process, we believe that these issues would be more appropriately resolved in a different proceeding.”⁹

While BellSouth has removed the immediate prospect of blocking traffic it objects to, as Sprint points out, its revised policy still is a threat to fair, reasonably and efficient CMRS-ILEC

⁶ *Id.*

⁷ BellSouth has refused to activate NXX codes for Nextel in South Carolina. From December 2001 through January 2002, for example, BellSouth refused to activate in its tandem switch a Nextel NXX Code for Monks Comer, South Carolina which is in the Home Telephone Company service area, and which subtends the BellSouth tandem. Nextel met all of the requirements for NeuStar to assign Nextel an NXX Code and BellSouth’s refusal has resulted in Nextel not being able to sell mobile handsets with a local dialing plan in Monk’s Comer. Not only did Nextel lose revenue, but, from the Commission’s perspective, BellSouth’s actions ensured that there were fewer competitive telecommunications service choices for consumers in Monk’s Comer.

⁸ Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services in Georgia and Louisiana, *Memorandum Opinion and Order*, CC Docket No. 02-35, FCC 02-147, at ¶¶ 207-208 (rel. May 15, 2002).

⁹ *Id.*

interconnection. It unquestionably would increase the costs that CMRS providers incur for CMRS-LEC interconnection. The institution of this policy also coincides with BellSouth's anticipated entry into the interLATA market, which strongly suggests BellSouth's motive is to raise the costs of a competitive rival. The Commission, and not nine separate state public service commissions, should resolve in this matter promptly in the context of Sprint's Petition for Declaratory Ruling

II. BELLSOUTH'S REVISED CMRS INTERCONNECTION POLICY IS ANTI-COMPETITIVE.

As Sprint points out in its Petition, BellSouth's policy discourages CMRS carriers from expanding local CMRS service availability in smaller, more rural communities by forcing unnecessary and uneconomic direct interconnection. Indeed, Nextel and other CMRS carriers cannot expand their service offerings to smaller, more rural communities often served by independent ILECs under the threat that BellSouth will fight to have the service arrangement declared illegal one state at a time."

Under Commission rules, a CMRS carrier's local service area is the Major Trading Area ("MTA"), and it is entitled to interconnect at a single point of interconnection within each LATA.¹⁰ Unilateral action by a BOC to frustrate efficient forms of interconnection is not what the Commission envisioned when it adopted its LEC-CMRS interconnection rules. As the Commission has observed, the "purpose of the LEC-CMRS interconnection rule is to promote competition in the telecommunications market by ensuring that all LECs and CMRS providers provide reasonable interconnection to one another subject to reasonable rates, terms, and

¹⁰ BellSouth already has filed on May 10 a Petition for Declaratory Statement with the Florida Public Service Commission asking that the PSC find CMRS service arrangements that are the subject of the Sprint Petition to Violate BellSouth's Virtual NXX tariff. *See* BellSouth Opposition, Attachment 1.

¹¹ *See* 47 C.F.R. § 51.701(b)(2)

conditions.”¹² In addition, the Commission noted that its CMRS interconnection rule “regulates the conduct of LECs with market power in their interconnection relationships with CMRS providers, [because] [h]istorically, some LECs denied or restricted interconnection options available to CMRS providers. . . .”¹³ The Commission’s CMRS-ILEC interconnection rules preempt inconsistent state commission determinations.

In the present case, BellSouth is attempting to use its market power by threatening CMRS providers with numerous state adjudicatory proceedings. If it succeeds, BellSouth would greatly increase CMRS interconnection costs with no offsetting public benefit. Such increased costs will also impede Nextel and other CMRS competitors in their efforts to provide credible substitute service for traditional landline service. Indeed, if BellSouth can make CMRS interconnection arrangements more laborious and expensive, BellSouth will likely gain more margin in the interLATA interexchange market, as well as make CMRS a less potent local competitor.

III. BELLSOUTH HAS PRESENT OBLIGATIONS UNDER ITS INTERCONNECTION AGREEMENTS WITH NEXTEL THAT IT HAS IGNORED.

BellSouth’s initial justification for its interconnection policy was a concern that it was providing service in non-franchised local service areas. This of course, as Nextel pointed out in its Section 271 Opposition was ludicrous, as the relevant service area for land-to-mobile call delivery is the service area of the CMRS provider, which is the MTA.

Apparently recognizing that it could not defend its policy using a state franchise area argument, a new rationale emerged in its March 20, 2002 *ex parte*. BellSouth in that letter stated that the matter was really one of proper interconnection pricing. Most recently, in its

¹² Federal Communications Commission Issues Biennial Regulatory Review Report for the Year 2000, *News*, CC Docket No. 00-75, FCC 00-346 (January 17, 2001).

¹³ *Id*

Opposition to the Sprint Petition, BellSouth states that “all parties should be compensated correctly for the costs incurred for provision of [their transmission] service.”¹⁴ Thus, the “problem” that BellSouth’s revised policy is designed to fix is one of correct compensation to BellSouth for its routing of calls from the independent ILEC to Nextel and other CMRS carriers.

BellSouth’s self-help ignores that Nextel – and presumably other CMRS carriers -- have interconnection agreements with BellSouth in all of BellSouth’s landline territories that provide BellSouth with compensation for the very transit/transmission function it provides between itself and an independent LEC in the same LATA.” Pursuant to its BellSouth interconnection agreement, Nextel already compensates BellSouth for any “non-local” traffic that is originated by Nextel and delivered by BellSouth for termination to the network of a third-party telecommunications carrier.¹⁶ BellSouth appears to have ignored this interconnection agreement currently in effect that provides for Nextel’s payment of compensation to BellSouth for transit routing between Nextel and an independent LEC within a BellSouth LATA. Because current arrangements provide for compensation to BellSouth – indeed at a rate negotiated for providing

¹⁴ BellSouth Opposition at 3.

¹⁵ See Interconnection Agreement Between BellSouth Telecommunications, Inc., and Nextel South Corp. (Effective June 4, 2001) (Attachment 2 to Nextel’s Section 271 Reply, filed March 28, 2002).

¹⁶ Non-Local Traffic is defined in the Nextel/BellSouth Agreement as “all traffic that is not Local Traffic or access services. . . .” Local Traffic is defined as (1) any telephone call that originates on the network of Carrier [Nextel] within a Major Trading Area (“MTA”) and terminates on the network of BellSouth in the same MTA and within the Local Access and Transport Area (“LATA”) in which the call is handed off from Carrier [Nextel] to BellSouth, and (2) any telephone call that originates on the network of BellSouth that is handed off directly to Carrier [Nextel] in BellSouth’s service territory and in the same LATA in which the call originates and terminates on the network of Carrier [Nextel] in the MTA in which the call is handed off from BellSouth to Carrier [Nextel]. See Interconnection Agreement Between BellSouth Telecommunications, Inc., and Nextel South Corp., at 4 (Effective June 4, 2001).

intraLATA, intraMTA transport and far higher than the reciprocal compensation rate – there is no unresolved compensation issue to be litigated in each state.

BellSouth also claims in its *ex parte* that CMRS carriers should not be permitted to avoid compensating BellSouth for transport from an independent LEC's territory to the CMRS/BellSouth point of interconnection ("POI.")¹⁷ However, the Nextel/BellSouth Interconnection Agreement specifically calls for *no* such compensation. More importantly, BellSouth should already bill the independent ILEC that is originating the traffic transiting charges for such traffic in accordance with the present "Calling Party's Network Pays" regime reflected in the Commission's rules and presumably in BellSouth's own interconnection agreement with the respective independent ILEC. Thus, under the existing interconnection agreement between Nextel and BellSouth, BellSouth is not entitled to bill the terminating carrier (Nextel) for local transiting services, and any attempt by BellSouth to do *so* would result in double recovery of BellSouth's costs.

This is *not* a case, as BellSouth would have the Commission or state commissions believe, of CMRS carriers failing to compensate BellSouth properly. Instead, BellSouth apparently wants to withdraw from providing transit services by constructing red herring arguments and creating problems where none exist.

IV. THIS ISSUE MUST BE RESOLVED PROMPTLY AT THIS COMMISSION.

Finally, BellSouth's nonexistent problem with its compensation is not a matter that the FCC can afford to ignore or to sweep into a morass of pending, unresolved intercarrier compensation issues. Sprint has raised a significant issue regarding BellSouth's policies that deprive CMRS carriers of their rights to interconnect with BellSouth at "any technically feasible point" within a LATA. BellSouth is without question the dominant facilities-based carrier within

¹⁷ BellSouth *Ex Parte* at 2-3.

each LATA it serves. Both independent ILECs and CMRS carriers depend upon BellSouth's tandem facilities for transit and other routing. Indeed, the Supreme Court was unambiguous in its determination that it is within this Commission's exclusive purview to examine which ILEC facilities are essential to the establishment of local service competition and to declare those facilities to be available to competitors on an unbundled basis.' Contrary to state rules, tariffs or policies are preempted.

BellSouth's revised interconnection policy deprives CMRS carriers of their right to choose a single point of interconnection in a LATA. The Commission's rule in this regard is plain and invoking state tariffs that it filed for a "virtual NXX" service – which is obviously irrelevant to CMRS service - cannot trump the uniform federal interconnection policies the FCC has established for CMRS interconnection.

Finally, despite BellSouth's apparent rethinking of its policy on outright NXX blocking, there remains a substantial question as to whether BellSouth's "revised" interconnection policy violates the FCC's numbering rules. BellSouth's *ex parte*, for example, continues to characterize the routine interconnection arrangements it dislikes as "inappropriate." It is not BellSouth's role to second guess the judgment of NeuStar, the FCC's designated numbering administrator, in assigning numbers to CMRS carriers operating within their geographically broad service territories.

¹⁸ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (finding that Section 2(b) and 201 of the Act provide the Commission with jurisdiction to prescribe the rules and regulations necessary to carry out the provisions of the Act. Since Congress expressly directed that the 1996 Act, along with its local-competition provisions, be inserted into the Communications Act of 1934, the Commission's rulemaking authority extends to implementation of the local-competition provisions, including the unbundling requirements in Section 251); *United States Telecom Association, et al., Petitioners v. Federal Communications Commission, et al.*, No. 00-1012, Consolidated with 01-1075, 01-1102, 01-1103, No. 00-1015, Consolidated with 00-1025, 2002 U.S. App. LEXIS 9834 at *16-17 (May 24, 2002) (noting that the Commission is charged with the task of identifying the ILECs' network elements that must be made available.).

Thus, the interconnection policy issues Sprint presents implicate significant federal interconnection rules and policies. BellSouth already has made good on its threat to force concerned CMRS carriers to run the gauntlet of a variety of state commission proceedings. BellSouth is unapologetic that it seeks to force CMRS carriers to make the case in multiple forums that common interconnection arrangements that traditionally have been used are reasonable and should continue.’’ The Commission must move swiftly and decisively.

This is a case of history repeating itself – with BellSouth threatening to play carriers through a painful and unnecessary state-by-state process and unilaterally changing the scope of its responsibilities that it committed to in signing **an** interconnection agreement with a competitive CMRS carrier. And, it is doing so for a specific anti-competitive reason – BellSouth wants to hamstring the one type of competitive carrier that can match its service offerings after it receives interLATA authority by raising its CMRS competitors’ overall interconnection costs without any public benefit. At a minimum, the Commission should enforce its rules and confirm that basic CMRS-ILEC interconnection policy issues – the framework of local interconnection – are exclusively a matter of federal interpretation.’’

V. CONCLUSION

For the foregoing reasons, BellSouth’s “revised” interconnection policy must be rejected. At its most basic, BellSouth’s revised policy would prevent continued efficient interconnection for CMRS providers. The Commission should not allow BellSouth unilaterally to repudiate the terms of its interconnection agreements with CMRS carriers and to hide behind the language of

¹⁹ Indeed, BellSouth inconsistently argues that state commissions are the place to resolve interconnection and numbering matters, while at the same time arguing that this Commission should punt any transit traffic and other interconnection policy matters raised by BellSouth’s interconnection policies to Commission proceedings. BellSouth ***Ex Parte*** at 3-4.

²⁰ See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

some irrelevant state tariffs that BellSouth has, in practice, ignored up until now. Nextel thus requests that the Commission confirm promptly that these issues *are* exclusively federal matters for this Commission to resolve and to direct BellSouth to eliminate its “revised” interconnection policies.

Respectfully submitted,

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June 6, 2002

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Drinker Biddle & Reath LLP do hereby certify that on this 6th day of June, 2002, a copy of the foregoing **“REPLY TO OPPOSITION”** was hand delivered or mailed where applicable to each of the following:

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**Before the
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In the Matter of)
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Sprint Petition for Declaratory Ruling)
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Obligations of Incumbent LECs to)
Load Numbering Resources Lawfully)
Acquired and to Honor Routing and)
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interconnecting Carriers)

**Comments of ALLTEL Communications, Inc.
in Support of Sprint Request for Declaratory Ruling**

ALLTEL Communications, Inc. (“ALLTEL”)¹ supports Sprint Corporation’s (“Sprint”) above-captioned request for a declaratory ruling (the “Sprint Petition”) to the effect that incumbent local exchange carriers (“ILECs”) cannot refuse to either load numbers lawfully obtained by Commercial Mobile Services (“CMS”) providers from rate centers located outside the ILEC service territory or to route traffic to and from those numbers in accord with the actual path of the call.² ALLTEL shares Sprint’s urgings that the Commission immediately issue a ruling confirming the status and primacy of

¹ ALLTEL is the subsidiary of ALLTEL Corporation through which competitive telecommunications services, including CMS services, are provided. ALLTEL is affiliated with the ALLTEL local exchange companies by virtue of their common ownership and control by ALLTEL Corporation.

² The Sprint petition was filed on May 9, 2002 and was opposed by BellSouth Corporation and BellSouth Telecommunications, Inc. (jointly “BellSouth”) on May 22, 2002.

federal law and Commission regulation on these issues and, consequently, the unlawfulness of BellSouth's position.

Sprint seeks to affirm the right of CMS carriers to obtain NXX codes from any rate center within a particular MTA in which it both has facilities and provides service, and to have those numbers loaded and activated in the LEC's tandem through which Sprint interconnects. As delineated in the Sprint Petition, this is a long-standing practice of CMS carriers and one that is fully consistent with Commission rule and precedent. It is now axiomatic that CMS carriers have the right to interconnect directly or indirectly with other telecommunications carriers through the ILEC of their choosing in accord with the ILEC's obligations under Section **251** of the Act.³ Further, under the Commission's interconnection orders, it is now similarly axiomatic that intra-MTA calls to and from a CMS carrier are local in nature and therefore terminated subject to reciprocal compensation arrangements and not access charges.⁴ This is the current status of the Commission's regulation, and it matters not whether the issue is referred to the pending intercarrier compensation proceeding' inasmuch as Sprint seeks confirmation as to existing law and not the formulation of prospective rules. Nor can the Commission accept BellSouth's assertion of a lack of controversy and dismiss Sprint's petition on that

³ 47 USC Sec. 251(c) (1996). See Sprint Petition at pages 15-16 and citations therein.

⁴ See Sprint Petition at pages 15-16 and citations therein

⁵ ALLTEL notes that Nextel and Triton PCS raised similar issues in the proceeding on BellSouth's recently granted Section 271 application. In the Matter of Joint Application by BellSouth Telecommunications, Inc. and BellSouth Lone Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana. CC Docket No. **02-35**, FCC 02-147 (released May 15, 2002) at paras. 207-208. These issues were referred to the intercarrier compensation docket, but the issue under consideration there was the "virtual NXX" issue. As Sprint notes at page 13 of its petition, unlike the "virtual NXX" situation, CMS carriers obtain codes where they actually have facilities and provide service

basis" for BellSouth, in its revised carrier notification letter, has never acknowledged the legitimacy of Sprint's grievance, and states only that it will not unilaterally refuse to load the codes but seek relief from the obligation to do so at the state level. Indeed, given the timing of BellSouth's revised policy and the release of the Commission's decision on BellSouth's Section 271 application, there is no guarantee in the absence of a Commission ruling that BellSouth will not regress to its previous position of refusing to load the codes.

BellSouth appears to believe that the CMS industry is to be burdened with each of the arcane incidents of the local exchange industry and has sought state relief to that end despite the primacy of federal regulation in the area'. It essentially argues that because a number is rightfully taken from a rate center served by a non-BellSouth ILEC that the non-BellSouth LEC must be involved in routing the call.⁸ But that argument belies the conventional call routing in CMS **networks** in which the MSO is interconnected (in accord with the CMS carriers rights) to the BellSouth tandem, and the call may never pass through the non-BellSouth ILEC's system. In short and in practice, the call, because it is a CMS call, should be routed as any other local, intra-MTA call. Admittedly, while intercarrier compensation issues may arise in this context, they may **be** adequately addressed under the current negotiation framework established by the Commission's regulations and in the absence of a refusal by the interconnecting ILEC to provide the

⁶ See, BellSouth Opposition at page 1.

See Sprint Petition at pages 19-20

⁸ See Attachment 1 to BellSouth **Opposition**.

originating and terminating carriers with appropriate meet point billing records.⁹ The approach advocated by BellSouth would ultimately permit it, by virtue of its power over an extended and ubiquitous local exchange territory, to force CMS carriers into costly and highly inefficient interconnection arrangements in contravention of both the Act and the rules -- and *that* is a matter which should be addressed and prevented in the intercarrier compensation rulemaking. The Commission should grant Sprint's Petition and issue the requested ruling forthwith.

Respectfully submitted,
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⁹ ALLTEL has been advised by BellSouth that it will not provide meet point billing data for the termination of traffic from other non-BellSouth carriers for calls made to **ALLTEL** CMS subscribers on numbers centered outside of BellSouth's territory, even though the interconnection arrangements take the call through a BellSouth tandem.